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Law



TORT CLAIMS

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This instruction implements AFPD51-5, section A, Administrative Claims For or Against the Air Force. It tells how to investigate, adjudicate, and settle tort claims against the Air Force. This instruction requires the collection and maintenance of personal information protected by the Privacy Act of 1974. The authority to collect and maintain this information is in 10 U.S.C. 8013 and Executive Order 9397. System of records notices 112 AF JAA, Air Force Claims Information Management System (AFCIMS), and 112 AF JA B, Claims Records, apply.

SUMMARY OF REVISIONS

In summary, the changes (1) define an oversight role for MAJCOM SJAs in Tort claims functions; (2) allow 3AF and 5AF to settle Military Claims Act and International Agreement Claims Act claims for other services under the auspices of their single service responsibility (they can already settle claims under the Foreign Claims Act); (3) indicate the costs of presenting a claim are not usually compensable; (4) allow bases to settle medical malpractice claims after JACT approval; (5) add discretionary function and those not in the best interests of the United States as exceptions to payment of claims under the MCA; (6) update addresses to send nonappropriated funds claims for payment; (7) make bases responsible for investigating CAP claims; and (8) delete the requirement for tabbing property damage claims files when the claims are settled locally.

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Chapter 1

TORT CLAIMS PROCESSING

1.1. Scope. This chapter tells how to process tort claims in accordance with:

- The Federal Tort Claims Act (FTCA), 28 U.S.C. 1346(b), 2671-2680.
- The Military Claims Act (MCA), 10 U.S.C. 2733.
- The Foreign Claims Act (FCA), 10 U.S.C. 2734.
- The International Agreement Claims Act (IACA), 10 U.S.C. 2734a and 2734b.
- The Air Force Admiralty Claims Act (AFACA), 10 U.S.C. 9801-9804, 9806.
- The National Guard Claims Act (NGCA), 32 U.S.C. 715.
- The Advance Payments Act, 10 U.S.C. 2736.
- Use of Government Property Claims Act, 10 U.S.C. 2737

1.2. Responsibilities of Tort Claim Authorities.

1.2.1. The Judge Advocate General (TJAG):

- 1.2.1.1. Develops tort claims and litigation policies.
- 1.2.1.2. Trains claims officers and paralegals.
- 1.2.1.3. Denies or approves settlement of tort claims.
- 1.2.1.4. Sets up geographic areas of claims responsibility.

1.2.2. Tort Claims and Litigation Division (AFLSA/JACT):

- 1.2.2.1. Implements tort claims and litigation policies and guides claims offices.
- 1.2.2.2. Supervises worldwide tort claims and litigation activities.

1.2.2.3. Recommends:

- Settlement of tort claims to TJAG and the Secretary of the Air Force (SAF).
- Disposition of tort claims and litigation to the Department of Justice (DoJ)-

1.2.2.4. Coordinates with the DoJ, the Department of Defense (DoD), and other Government agencies on tort claims and litigation matters.

1.2.2.5. Denies or negotiates settlement of tort claims.

1.2.2.6. Supports Air Force tort litigation.

1.2.2.7. Keeps historical records on all Air Force tort claims and litigation.

1.2.2.8. Conducts tort claims and litigation training.

1.2.3. Environmental Law and Litigation Division (AFLSA/JACE):

1.2.3.1. Implements environmental tort claims and litigation policies.

1.2.3.2. Recommends:

- Settlement action on environmental tort claims to TJAG and the SAF.
- Disposition of environmental tort claims and litigation to the DoJ.

1.2.3.3 Coordinates with the DoJ, DoD, and other Government agencies on environmental tort claims and litigation matters.

1.2.3.4. Denies or negotiates settlement of environmental tort claims.

1.2.3.5. Supports Air Force environmental tort litigation.

1.2.3.6. Keeps historical records on all Air Force environmental tort claims and litigation.

★1.2.4. Major Command Staff Judge Advocate (SJA):

★1.2.4.1. Provides general supervision of claims activities within their command.

★1.2.4.2. Acts as a foreign claims commission.

★1.2.4.3. Reimburses, pay prorated share or objects to claims in any amount under applicable Status of Forces Agreements (SOFA).

★1.2.5. SJA of 3AF, 5AF, and 9AF (for CENTCOM):

★1.2.5.1. Notifies AFLSA/JACT of serious incidents having tort liability potential.

★1.2.5.2. Investigates incidents with tort claims potential which occur in areas where they have single service geographic claims responsibility.

★1.2.5.3. Denies or negotiates settlement of tort claims in areas where they have single service geographic claims responsibility.

★1.2.6. Base Staff Judge Advocate (SJA):

1.2.6.1. Notifies AFLSA/JACT of serious incidents having tort liability potential.

1.2.6.2. Investigates incidents with tort claims potential in assigned geographic area.

1.2.6.3. Denies or negotiates settlement of tort claims.

1.3. Presenting Tort Claims:

1.3.1. Filing a claims. A claimant must present to the Air Force a signed SF 95, Claim for Damage, Injury, or Death, or other signed writing demanding a specific amount of money for:

- Damage to or loss of property.
- Personal injury.
- Death.

1.3.2. Amending a Claim. A claimant may amend a claim in writing before final action on the claim. However, a claimant may not amend a claim on appeal or reconsideration.

EXCEPTION: If based upon newly discovered evidence, the claimant may amend the claim.

1.3.3. Transferring a Claim. A claims office receiving a claim from an incident that did not occur within its assigned geographic area transfers it to the correct legal office or Government agency.

1.3.4. Taking Immediate Action on a New Claim. The claims officer must mark the date received and the designation of the receiving office on every tort claim when received, even if it isn't on the proper form or is incomplete.

1.3.4.1. The SJA sends written acknowledgment of the claim to the claimant or the claimant's agent.

★1.4. Substantiating Tort Claims. Claimants must substantiate their claims by submitting documentation in accordance with 28 Code of Federal Regulations (CFR), Part 14.4, Administrative Claims, Evidence and Information to be Submitted. Costs of preparing and presenting a claim, such as copying charges, appraisals, and attorneys' fees are usually not payable. Look to the applicable claims statute to determine whether or not payment is appropriate.

1.4.1. When a claimant fails to provide substantiation, the claims officer immediately notifies the claimant in writing. If the claimant fails to provide the requested documentation after the claims officer sends a followup letter, the claims officer continues investigating and processing the claim in accordance with paragraph 1.9.

1.5. Who Can Claim:

- Owners of property for property damage.
- Injured persons for personal injury.
- Executors or administrators of estates based on an individual's death.
- The subrogor (insured) and the subrogee (insurer), jointly or individually.

1.6. Signatures on Tort Claims:

1.6.1. Claimant or Agent. The claimant or authorized agent signs the claim.

1.6.1.1. Authorized agents must attach evidence of their authority.

1.6.2. Owners of Property. All owners having an interest in property that is the subject of the claim must sign.

1.6.3. Corporation. An authorized corporate representative, showing the capacity to file claims on behalf of the corporation, must sign the claim.

1.7. Splitting Tort Claims. A tort claim includes all damages due a claimant because of an accident or incident. Claims personnel process the claim of a subrogor (insured) and subrogee (insurer) for damages from the same incident as a single claim.

★1.8. Tort Claims Settlement Authorities. Settlement authorities may deny or settle tort claims. They include:

- Base SJAs.
- The SJAs of 3AF, 5AF, and 9AF (for CENTCOM)
- The Chief and branch chiefs of AFLSA/JACT.
- The Chief and Environmental Torts Branch Chief of AFLSA/JACE (for environmental torts).
- The Director, Civil Law and Litigation (AFLSA/JAC).
- The Deputy Judge Advocate General (DJAG).
- TJAG.
- The SAF.

1.8.1. Dollar Limitations. Authority to deny or settle tort claims is subject to dollar limitations as specified in chapter 2, 3,3, 4 and 5.

1.8.2. Redelegating Authority. Settlement authorities may redelegate their full authority to a subordinate judge advocate or civilian attorney.

1.8.3. Negotiating Settlements. A settlement authority may settle a tort claim for any sum within its delegated authority, regardless of the amount being claimed.

★1.8.4. Restrictions on settlement authority. *Settlement authorities may not deny or pay the following types of tort claims and must send them to AFLSA/JACT for action:*

- Medical malpractice. Exception: Settlement authorities may settle claims within their settlement authority after approval from AFLSA/JACT.
- Legal malpractice.
- Onthejob personal injury or death of an employee of a Government contractor.
- Admiralty and maritime claims.
- Civil Air Patrol (CAP) claims

1.9. Investigating and Processing Tort Claims. Claims personnel investigate and process tort claims as follows:

1.9.1. Witnesses Interviews. Interview principal witnesses promptly and summarize the interview as a memorandum for record, beginning with the required language: "An Air Force attorney (or paralegal) has prepared this memorandum while investigating a claim or potential claim against the US. The attorney's (or paralegal's) impressions and observations summarized herein were obtained in anticipation of litigation involving the same incident. This memorandum would not have been prepared in the normal course of business activities, but for the possibility that litigation might follow."

1.9.2. Witness Locator Chart. List each witness on a locator chart and keep it current. Include:

- The witness' full name.
- Social security number (SSN).
- Current address.
- Work and home telephone numbers.
- Expected transfer or completion of service date, with future address.

1.9.3. Documents. Obtain all relevant documents and identify the name, duty address, and telephone number of the custodian for each.

1.9.4. Photographs. Take photographs as soon as possible. On the back of the photographs, note:

- The name, grade, SSN, and duty organization of the photographer.
- The date and time the photograph was taken.
- The orientation of the photograph to the place of the incident.

1.9.5. SevenPoint Memorandum. Prepare a sevenpoint memorandum for all tort claims and include:

- The claimant's name, claim number, the amount, and the date and place presented.
- The type of claim (FTCA, MCA, and so on).
- The date and place of the incident.

- The address of the claimant and the claimant's attorney.
- The facts of the incident.
- A brief of the applicable law.
- A liability and damage analysis and a recommendation as to how to handle the claim.

1.9.6. Assembling Tort Claim Files. Assemble and tab all tort claim files in accordance with attachment 2.

1.9.7. Central Data Base Reporting. The SJA ensures that personnel immediately report all tort claims in the AFCIMS in accordance with AFM 171575.

1.10. Action by Settlement Authorities. Settlement authorities may approve or deny tort claims within the limits of delegated authority.

★1.10.1. Passing Claims to a Higher Authority. SJAs send claims that they cannot resolve at their level to AFLSA/JACT within 120 days of receipt. Submit:

- An original and one copy for FTCA claims.
- Only the original file for MCA, FCA, and IACA claims.

1.10.2. Approving Claims. The settlement authority informs the claimant in writing of the amount approved and the reason for only partial approval.

1.10.2.1. Before the settlement authority pays the claimant, the claimant must fully accept the amount approved in full satisfaction of the claim, and sign a settlement agreement.

1.10.3. Denying Claims. The settlement authority sends a final denial letter to the claimant or authorized agent by registered mail, return receipt requested. The letter must state:

- The full title and legal citation of the statute under which the settlement authority considered the claim.
- The reasons for denial.

1.10.3.1. For FTCA claims, the letter must inform claimants that they may file suit in an appropriate US District Court not later than six months after the date of mailing of the denial.

1.10.3.2. For MCA and NGCA claims, the letter must inform claimants that they may appeal in writing within 60 days of the date of mailing of the denial.

★1.11. Acting on Appeals. A settlement authority receiving a timely appeal (60 days after the date of final denial, unless the claimant provides good cause):

- Reviews the appeal.
- Reaches a final agreement with the claimant, or sends the file to the appellate authority with a recommendation for final action. (Note: The SJAs of 3AF, 5AF and 9AF (for CENTCOM) may not act as appellate authorities.)

1.12. Handling Requests for Tort Claim Files. Tort claim files are the property of the Air Force, and claims personnel prepare them in anticipation of litigation.

1.12.1. Do not give claim files to claimants or their agents for review or reproduction.

1.12.2. Process Freedom of Information Act or Privacy Act requests for files in accordance with AFIs 3731 and 37-132, respectively.

1.12.3. Never release these parts of the claim file:

- Legal memoranda containing opinions, conclusions, and recommendations.
- Attorneys and paralegals' written summaries of witness interviews.
- Experts' written reports and evaluations.
- Other written material that authorities have acquired for litigation, including legal research.

1.13. Prohibition on Prejudging Claims. Before the settlement authority takes action, claims personnel must not:

- Give any opinion to the claimant about an anticipated approval or disapproval of the claim.
- Reveal the recommendations of a settlement authority.

1.14. Avoiding Conflicting interests. Air Force personnel must not represent or aid any claimant or potential claimant in a claim against the US.

1.15. Assisting Claimants. At the request of the claimant, Air Force personnel may:

- Provide information about the proper procedures for correctly filing a claim.
- Return original copies of evidence.

1.16. Handling Medical Malpractice Claims.

1.16.1. Claims officers prepare DD Form 2526, Case Abstract for Malpractice Claims, for each practitioner substantially involved in a claim of negligent treatment.

1.16.2. Claims personnel:

- Copy and assemble medical records as they are organized in the original medical record.
- Use the same type of folders as the originals.
- Copy records only on one side of a page.
- Number each record in the lower right corner, from the oldest to the most recent.

1.16.3. Claims officers send the file to the medical law consultant (MLC) within 75 days of the filing of the claim to obtain a medical review.

1.16.4. The MLC completes a review and returns the file to the base within 45 days of receipt.

1.17. Making Payments. Settlement authorities pay approved settlements directly to the claimant.

EXCEPTION: If an attorney represents the claimant, settlement authorities:

Name both the claimant and the attorney as payees on the payment voucher.

Address the voucher to the attorney.

★1.17.1. Settlement authorities use SF 1034, Public Voucher for Purchases and Services Other Than Personal, to make payments.

EXCEPTION: SJAs making payments for claims under the FTCA, use:

- SF 1 1 45, *Voucher for Payment Under Federal Tort Claims Act*.
- SF 1 1 45a, *Voucher for Payment Under Federal Tort Claims Act-Memo*.

1.18. Making Advance Payments

1.18.1. Settlement authorities may make an advance payment, if:

- The claimant requests it.
- The claimant appears to have a valid MCA, FCA, or NGCA claim that will exceed the amount of the advance payment.

1.18.1.1. Settlement authorities may not make advance payments for FTCA claims.

1.18.2. The circumstances must demonstrate an immediate need for food, shelter, medical or burial expenses, or other necessities.

1.18.3. TJAG may make an advance payment of \$100,000 or less.

1.18.4. These authorities may make an advance payment of \$25,000 or less:

- The Chief and branch chiefs of AFLSA/JACT.
- The Chief, AFLSA/JACE (for environmental torts).

- The SJAs of USAFE, PACAF, and 9AF for CENTCOM.

1.18.5. Settlement authorities may delegate their authority to make advance payments orally with a written follow-up.

1.18.6. Before making advance payments, settlement authorities first obtain the claimant's written agreement to:

- Refund the money if the claimant files no claim within the statutory period.
- Refund any portion of the advance payment that exceeds the final settlement.

1.19. Determining Attorney Fees. Attorney fees will not exceed 20 percent of any administrative settlement amount. Attorney fees are included as a part of the administrative settlement amount and in addition to it.

1.19.1. In a structured settlement, the Air Force bases attorney fees on the cost of the settlement to the US. and not on the payout value of the benefits under the settlement.

1.20. Supporting Litigation. The Air Force (AFLSA/JACT):

- Helps US. Attorneys during litigation of Air Force tort cases.
- May delegate litigation responsibilities to base SJAs.

1.20.1. Notification Regarding Tort Litigation. The SJA immediately notifies AFLSA/JACT of new tort litigation against the US. or its employees.

Chapter 2

FEDERAL TORT CLAIMS ACT CLAIMS

2.1. Scope . This chapter implements the Federal Tort Claims Act (FTCA), 28 U.S.C. 1346(b), 2671-2680, and 28 CFR, Part 14, Administrative Claims Under Federal Tort Claims Act

2.2. FTCA Settlement Authority

2.2.1. TJAG, DJAG, AFLSA/JAC, and AFLSA/JACT may:

- Deny claims in any amount.
- Pay claims filed in any amount when payment is for \$200,000 or less.
- Settle claims for payment exceeding \$200,000, subject to approval of the US Attorney General or designee.

2.2.2. AFLSA/JAC and AFLSA/JACE may:

- Deny environmental tort claims in any amount.
- Pay environmental tort claims filed in any amount when payment is for \$200,000 or less.
- Settle environmental tort claims for payment exceeding \$200,000, subject to approval of the US Attorney General or designee.

2.2.3. The SJAs of each Air Force base may:

- Deny claims of \$25,000 or less.
- Pay claims filed in any amount when payment is for \$25,000 or less.

2.3. Reconsidering Denied FTCA Claims. A claimant may request in writing within six months of final action that settlement authorities reconsider an FTCA claim.

2.3.1. The settlement authority sends the file to AFLSA/JACT.

EXCEPTION. The settlement authority may decide to reach a settlement with the claimant.

2.4. Paying FTCA Claims. Settlement authorities pay claims as follows:

2.4.1. Claims for \$2,500 or Less. Use Air Force claims funds (SF 11 45, Voucher for Payment under Federal Tort Claims Act) for settlements of \$2,500 or less.

2.4.2. Claims Exceeding \$2,500. The SJA sends a settlement in excess of \$2,500 directly to: Claims Division, General Accounting Office (GAO), 441 G St NW, Washington DC 20548, for payment under 31 U.S.C. 1304. The file must include:

- A signed original and six unsigned copies of the voucher (SF 1145). Do not provide a fund cite.
- Two signed originals of the settlement agreement.
- Two signed copies of the SF 95 or other written demand.
- A cover letter stating the officer signing the voucher has approval authority under 28 U.S.C. 2672.
- Evidence that the agent may act in the claimant's name, when applicable.
- Written approval of the Attorney General or designee when the payment exceeds agency settlement limits.

Chapter 3

MILITARY CLAIMS ACT CLAIMS

3.1. Scope. This chapter implements the MCA, 10 U.S.C.2733.

3.2. MCA Settlement Authority:

3.2.1. The SAF may:

- Deny claims in any amount.
- Pay claims filed in any amount when payment is for \$100,000 or less.
- Settle claims for payment exceeding \$100,000 by paying the first \$100,000 and reporting the excess to the GAO for payment.

3.2.2. TJAG:

- May deny claims in any amount.
- Pay claims filed in any amount when payment is for \$100,000 or less.

3.2.3. The DJAG; Director, AFLSA/JAC; Chief and branch chiefs, AFLSA/JACT; Chief and Environmental Torts Branch Chief, AFLSA/JACE (for environmental torts) may:

- Deny claims in any amount.
- Pay claims filed in any amount when payment is for \$25,000 or less.

★3.2.4. The SJAs of 3AF, 5AF and 9AF (for CENTCOM) and the SJAs of each Air Force base may:

- Deny claims of \$25,000 or less.
- Pay claims filed in any amount when payment is for \$25,000 or less.

3.3. Who Can Claim:

- Citizens and inhabitants of the US.
- US. military personnel and civilian employees.
EXCEPTION.- US military personnel and civilian employees may not make MCA claims for personal injury or **death** incident to service.
- Persons in foreign countries who are not inhabitants of the foreign country.
- States, state agencies, counties, municipalities, or their political subdivisions.
- Subrogees (insurers) of proper claimants to the extent they have paid the claim.

3.4. Who Can't Claim:

- Governments of foreign nations, their agencies, and political subdivisions.
- Inhabitants of foreign countries.

3.5. Payable MCA Claims:

3.5.1. Negligent or Wrongful Act or Omission Claims. Settlement authorities pay claims resulting from negligent or wrongful acts or omissions that military or civilian personnel of the US. Armed Forces commit while acting within the scope of their employment.

EXCEPTION.-When an exclusion in paragraph 3.6 applies.

3.5.2. Noncombat Activity Claims. Claims arising from noncombat activities of the US. Armed Forces, whether or not such injuries or damages arose out of negligent or wrongful acts or omissions, unless an exclusion listed in paragraph 3.6 of this chapter applies.

3.6. MCA Exclusions. Settlement authorities don't pay the tort claims described in paragraph 3.5 under the MCA if the claim:

3.6.1. Is payable under the FTCA, FCA, [ACA, AFACA, NGCA, or the Military Personnel and Civilian Employees' Claims Act (MPCECA), 31 U.S.C. 3701, 3721.

3.6.2. Arises with respect to the assessment or collection of any customs duty, or the detention of any goods or merchandise by any US. officer of customs or excise, or any other US. law enforcement officer.

3.6.3. Is cognizable under:

- The Suits in Admiralty Act, 46 U.S.C., Appendix 741 and following.
- The Public Vessels Act, 46 U.S.C., Appendix 781 and following.

3.6.4. Arises out of:

- Assault.
- Battery.
- False imprisonment.
- False arrest.
- Malicious prosecution.
- Abuse of process.

EXCEPTION: Unless such actions were committed by an investigative or law enforcement officer of the US. who is empowered by law to conduct searches, seize evidence, or make arrests for violations of Federal law.

3.6.5. Arises out of:

- Libel.
- Slander.
- Misrepresentation.
- Deceit.

3.6.6. Arises out of an interference with contract rights.

3.6.7. Arises out of the combat activities of military forces during war.

3.6.8. Is for the personal injury or death of a member of the Armed Forces of the US. incident to service.

3.6.9. Is for the personal injury or death of a Government employee for whom benefits are provided by the Federal Employees Compensation Act, 5, U.S.C. 8101 and following.

3.6.10. Is for the personal injury or death of an employee, including nonappropriated fund employees for whom benefits are provided by the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 901 and following.

3.6.11. Is for a taking of property as by technical trespass or overflight of aircraft, or otherwise constitutes a taking.

3.6.12. Is for patent or copyright infringement.

3.6.13. Results wholly from the negligent or wrongful act of the claimant.

3.6.14. Is for the reimbursement of medical, hospital, or burial expenses furnished at the expense of the US., either directly or through contractual payments.

3.6.15. Arises from contractual transactions, express or implied (including rental agreements, sales agreements, leases, and easements), that:

- Are payable or enforceable under such contracts.
- Or arise out of an irregular procurement or implied contract.

3.6.16. Is for the personal injury or death of military or civilian personnel of a foreign government incident to service.

★3.6.17. Is based on an act or omission of an employee of the government, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation is valid. Do not deny claims solely on this exception without the prior approval of AFLSA/JACT.

★3.6.18. Is based on the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the government, whether or not the discretion involved is abused. Do not deny claims solely on this exception without the prior approval of AFLSA/JACT.

★3.6.19. Is not in the best interests of the United States, is contrary to public policy, or is otherwise contrary to the basic intent of the MCA. Do not deny claims solely on this exception without prior approval of AFLSA/JACT.

3.7. Applicable Law for Determining Liability under the MCA:

3.7.1. For tort claims arising from negligent or wrongful acts or omissions, settlement authorities apply these rules:

3.7.1.1. When a claim arises in the US., settlement authorities follow the law of the place where the act or omission occurred.

3.7.1.2. In claims arising in foreign countries, settlement authorities use the general principles of American tort law and the pure comparative negligence rule to determine the liability of the US.

3.7.1.3. Settlement authorities never apply the principle of absolute or strict liability.

3.7.2. For tort claims arising from noncombat activity, the claimant doesn't need to show negligence or fault, only causation and damages.

3.8. Applicable Law for Damages:

3.8.1. To measure damages in claims arising in the US. or its possessions, the settlement authority follows the law of the place where the act or omission occurred.

3.8.2. To measure damages in claims arising overseas, the settlement authority:

- Follows the general principles of American tort law.
- Uses the pure comparative negligence rule.

3.8.3. The settlement authority never pays punitive damages or medical or burial expenses furnished at US. expense

3.9. Paying MCA Claims. Settlement authorities:

- Pay settlements of \$100,000 or less from Air Force claims monies.
- Pay settlements exceeding \$100,000 by paying the first \$100,000 with Air Force claims monies and sending the remainder to the GAO for payment under 31 U.S.C. 1304.

Chapter 4

INTERNATIONAL AGREEMENT AND FOREIGN CLAIMS

Section A—SingleService Claims Responsibility

4.1. Scope. This chapter implements DoD Directive 5515.8, SingleService Assignment of Responsibility for Processing of Claims, 9 June 1990; the FCA, 10 U.S.C. 2734; and the IACA, 10 U.S.C. 2734a and 2734b.

4.2. Assignment of Single-Service Claims Responsibility. DoD Directive 5515.8 assigns singleservice claims responsibility under various applicable claims statutes for processing and settling claims against the US. arising in foreign areas.

Section B—The International Agreement Claims Act

★4.3. Reimbursement Authority. The SAF; TJAG; DJAG; Director, AFLSA/JAC; the Chief, AFLSA/JACT; the Chief, General and International Torts Branch, AFLSA/JACT; and the SJAs of PACAF, USAFE, 3AF, 5AF, Lajes Field, and 9AF (for CENTCOM) may:

- Reimburse a claim.
- Pay a prorated share of a claim.
- Object to a claim in any amount.

4.4. Claims Arising in a Foreign Country. Claims personnel:

- Direct claimants filing international agreement claims to the appropriate receiving state office.
- Send claims that the Air Force receives to the US. sending state office for delivery to the receiving state.

4.5. Claims Arising in the United States. Claimants may file tort claims arising from the acts or omissions of the military or civilian personnel of another SOFA contracting party at any Air Force claims office.

4.5.1. The installation with claims jurisdiction over the area where the incident arose:

- Investigates the claim.
- Sends it to the US. Army Claims Service for adjudication.

4.6. Air Force Processing. When the Air Force has singleservice claims responsibility, the sending state office:

4.6.1. Coordinates with the receiving state office on claims investigations.

4.6.2. Audits receiving state bills to ensure that all paid claims properly fall within the agreement, and it objects when they do not.

4.6.3. Processes under the FCA those tort claims arising from the conduct of US. personnel while acting outside of the scope of their official duties

4.6.4. Arranges for payment of the US.' prorata share of settled claims.

Section C—The Foreign Claims Act

4.7. Settlement Authority. The SAF may deny or settle claims for any amount. For claims approved for more than \$100,000, the SAF reports the amount exceeding \$100,000 to the GAO for payment.

4.7.1. The TJAG; DJAG; and Director, AFLSA/JAC are foreign claims commissions (FCC), and may:

- Deny claims in any amount.
- Pay claims filed in any amount when payment is for \$100,000 or less.

4.7.2. The Chief, AFLSA/JACT; and the Chief, General and International Torts Branch, AFLSA/JACT are FCCs who may:

- Deny claims in any amount.
- Pay claims filed in any amount when payment is for \$50,000 or less.

4.7.3. The SJAs of PACAF, USAFE, 9AF (for CENTCOM), and AFSPACECOM (for Greenland and Canada) are FCCs who may:

- Deny claims of \$50,000 or less.
- Pay claims filed in any amount when payment is for \$50,000 or less.

4.7.4. The SJAs of the numbered air forces (NAF) in PACAF and USAFE; the SJA of 12AF (for South America); and the SJAs of Lajes AB, Azores, Patrick AFB, FL, and Howard AFB, Panama, are FCCs who may:

- Deny claims of \$50,000 or less.
- Pay claims filed in any amount when payment is for \$25,000 or less.

4.7.5. The SJAs of each Air Force base in PACAF, USAFE, and CENTAF are FCCs who may:

- Deny claims of \$25,000 or less.
- Pay claims filed in any amount when payment is for \$25,000 or less.

4.8. Appointing FCCs. Any settlement authority in this section may appoint one or more subordinate judge advocates or civilian attorneys as FCCs.

4.9. Statute of Limitations. A claimant must present a claim (orally if based on local custom, or in writing) within two years after it accrues.

4.10. Who Can Claim:

- Inhabitants of a foreign country who are foreign nationals.
- Foreign companies and business entities.

- Foreign governments and their political subdivisions.
- US. corporations with a place of business in the country where the claim arose.
- US. nationals. **EXCEPTION.** Those residing in a foreign country primarily because they are employed or sponsored by an employee of the US., or employed or sponsored by an employee of an US. civilian contractor performing a contract with the US.
- Foreign military personnel, if the injury, death, or property loss did not occur during joint military operations, or is otherwise not incident to the active duty of the claimant.

4.11. Who Can't Claim:

- Insurers and other subrogees.
- Dependents ccompanying either US. military or civilian employees.
- Civilian employees of the US., including local inhabitants, injured in the scope of employment.
- Foreign military personnel for losses arising incident to service.
- National governments, including their citizens and corporations, which are engaging in armed conflict with the US. or its allies.

4.12. FCA Applies Only Outside the United States.

The claim must:

- Arise outside the territory of the US.
- Be caused by noncombat activities of the US. Armed Forces or by the wrongful acts of civilian employees or military members of the Armed Forces.

4.13. Negligence Not a Prerequisite. Settlement authorities may pay FCA claims, even when no negligence has occurred.

4.14. Scope of Employment. A settlement authority may pay a claim, even if the injury results from a criminal act clearly outside the scope of employment.

4.15. Claims Not Payable. A claim is not payable if it:

4.15.1. Has been paid or denied by a competent tribunal under the North Atlantic Treaty Organization (NATO),

status of forces agreement (SOFA), or any similar treaty, or is waived under such treaty.

4.15.2. Is purely contractual in nature.

4.15.3. Is for:

- Attorney fees.
- Punitive damages.
- A judgment or interest on a judgment.
- Bail or court costs.

4.15.4. Arises from a private contractual relationship between US. personnel and third parties concerning:

- Payment of leases.
- Public utilities.
- Hiring of domestic servants.
- Private debts.

4.15.5. Is based solely on compassionate grounds.

4.15.6. Is a bastardy claim.

4.15.7. Is for patent or copyright infringement.

4.15.8. Is for rent or other payments involving regular US. acquisition and disposition of real property.

4.15.9. Is for real property taken by a continuing trespass.

4.15.10. Results from an act of US Armed Forces in combat.

4.15.11. Is based on the negligence of a concessionaire or other independent contractor.

4.15.12. Arises out of personal activities of family members, guests, servants, or pets of members and employees of the US. Armed Forces.

4.16. Applicable Law. A settlement authority:

- Follows the law and standards of the country where an incident occurs.
- Does not deduct compensation from collateral sources.

EXCEPTION: Does deduct payment from an insurance policy for which a US. military member has paid.

4.17. Rights of Subrogation, Indemnity, and Contribution. The Air Force has the rights of subrogation, indemnity, and contribution, as local law permits.

4.17.1. Settlement authorities do not seek contribution or indemnity:

- From US. military personnel or civilian employees whose conduct gave rise to US.
- Government liability.
- When it would be harmful to international relations.

Chapter 5

NONAPPROPRIATED FUND, AIR NATIONAL GUARD, CIVIL AIR PATROL, ADMIRALTY, AND MISCELLANEOUS CLAIMS

Section A—General

5.1. Scope. This chapter contains procedures for settling:

- Nonappropriated fund instrumentality (NAFI) claims.
- Civil Air Patrol (CAP) claims.
- Claims under the NGCA, 32 U.S.C. 715.
- Claims under the AFACA, 10 U.S.C. 9801-9804, 9806.
- Miscellaneous claims.

This chapter implements DoD Directive 5515.6, Processing Tort, Contract and Compensation Claims Arising Out of Operations of Nonappropriated Fund Activities, dated 3 November 1956.

Section B—Nonappropriated Fund Claims

5.2. Settling NAFI Claims. Settle NAFI claims in accordance with chapter 2, 3, 4, and 5.

5.3. Settlement Authority. The settlement authority for NAFI tort claims is the same as the authority for the particular chapter of this instruction under which the Air Force settles the claim (for example, FTCA, MCA) with these exceptions:

5.3.1. TJAG may deny NAFI claims adjudicated under the MCA, FCA, and AFACA in any amount and approve claims in any amount without referral to the SAF or GAO.

5.3.2. The Director, AFLSA/JAC; the Chief, AFLSA/JACT; and the Chief, AFLSA/JACE (for environmental torts) may:

- Deny NAFI claims in any amount.
- Approve NAFI claims filed in any amount when payment is for \$100,000 or less, without referral to the SAF or GAO, when settled under the MCA, FCA, or AFACA.

5.3.3. The decision of the settlement authority is binding upon the NAFI.

5.4. Appellate Authority. TJAG is the final appellate authority on all NAFI claims the Air Force considers under the MCA.

5.5. Liability of the United States. The United States is liable under the FTCA for negligent acts or omissions committed by NAFI employees acting within the scope of their employment.

5.5.1. Only nonappropriated funds may be used to pay an administrative settlement, or a judgment resulting from a lawsuit.

★5.5.1.1. Send claims for payment involving the Army and Air Force Exchange Service (AAFES) to: HQ AFFES, ATTN: GC-Z/CC, P.O. Box 660202, Dallas, TX 75266-0202.

★5.5.1.2. Send claims for payment involving all other NAFIs to the following: For claims over \$50.00, send to: HQ AFSVA/SVXBC, 10100 Reunion Place, Ste. 501, San Antonio, Texas 78216-4138. Claims of \$50.00 and under, send to the local NAFI giving rise to the claim.

5.6. Notice of Claim. Upon receiving a NAFI tort claim, the claims office sends a copy of the claim to Headquarters, Army and Air Force Exchange Service, General Counsel's Office (HQ AAFESGCZ/CC), P.O. Box 660202, Dallas TX 75266-0202, or to Headquarters, Air Force Services Agency, Office of Legal Counsel (AFSVA/LAW), 10100 Reunion PL, St 503, San Antonio, TX 78216-4138, as appropriate.

5.7. Proper Claims. Proper claims are those which arise from the operation of a NAFI activity and are caused by:

5.7.1. Nonappropriated fund civilian employees acting within the scope of their employment.

5.7.2. Military personnel or appropriated fund civilian employees performing off-duty, part-time work and receiving NAFI pay for their duties.

5.7.3. Negligent operation or condition of premises for which a NAFI is responsible.

5.8. Improper Claims. Settlement authorities don't consider the following claims under this section:

5.8.1. Claims arising out of the operation of a NAFI activity which are caused by military personnel or appropriated fund civilian employees performing assigned Air Force duties, even though they benefit a NAFI activity.

5.8.2. Claims arising out of the negligent operation or condition of premises for which a NAFI is not responsible.

5.8.3. Claims of NAFI employees for personal injury or death arising out of performance of their duties.

5.8.4. Claims of NAFI employees for loss or damage to property incident to their employment.

5.8.5. Complaints or claims for personal property loss or damage by NAFI customer's that the local NAFI activity can satisfactorily resolve.

5.8.6. Claims that NAFI concessionaires cause.

5.8.7. Claims arising out of NAFI activities involving:

- Contract disputes.
- Dishonored checks.
- Debts to NAFIs.
- Thirdparty workers' compensation claims.

5.9. NAFI Insurance Claims. Settlement authorities may settle claims arising out of the activities of a NAFI membership association, such as an aero club, under this chapter, on behalf of the NAFI insurance program.

Section C—Air National Guard Claims

5.10. Type of Claims. Settlement authorities may settle claims for death, personal injury, or property damage arising out of the noncombat activities of the Air National Guard (ANG) under the NGCA, 32 U.S.C. 715.

5.10.1. ANG members must be performing duty under 32 U.S.C. 316, 502, 503, 504, or 505.

5.10.2. Settlement authorities process claims arising out of the activities of ANG technicians employed in accordance with 32 U.S.C. 709 under the FTCA.

5.10.3. ANG members and employees must be acting within the scope of their employment.

5.10.4. Settlement authorities settle claims arising out of the activities of the ANG, while under Title 32 or Title 10 orders, other than noncombat, in accordance with chapter 2, 3, or 4.

5.10.5. Settlement authorities don't pay claims arising out of the activities of the ANG while under state orders.

5.10.5.1. SJAs refer such claims to state authorities.

5.11. Settlement Authority:

5.11.1. The SAF may:

- Deny claims in any amount.
- Pay claims filed in any amount when payment is for \$100,000 or less.
- Approve claims for payment exceeding \$1 00,000 by paying the first \$1 00,000 and reporting the excess to the GAO for payment.

5.11.2. TJAG may:

- Deny claims in any amount.
- Pay claims filed in any amount when payment is for \$100,000 or less.

5.11.3. The DJAG; Director, AFLSA/JAC; the Chief and branch chiefs, AFLSA/JACT; and the Chief and Environmental Torts Branch Chief, AFLSA/JACE (for environmental torts) may:

- Deny claims in any amount.
- Pay claims filed in any amount when payment is for \$25,000 or less.

5.11.4. The SJAs of each Air Force base may:

- Deny claims of \$25,000 or less.
- Pay claims filed in any amount when payment is for \$25,000 or less.

5.12. Filing, Processing, and Investigating a Claim:

5.12.1. The ANG immediately reports any ANG incident that might result in a tort claim to the Air Force SJA having geographical claims responsibility over the place where the incident occurred.

5.12.2. The receipt by a federally recognized ANG unit of a written, signed claim for money damages constitutes an Air Force receipt of the claim.

5.13. Who Can Claim: Citizens and inhabitants of the US.

- States, counties, and municipalities. **EXCEPTION.** States, counties or municipalities from the state of the ANG member causing the injury or property damage.
- Persons in foreign countries who are not inhabitants of the foreign country.
- Active members of the Armed Forces, including ANG members. **EXCEPTION.** The injury is incident to their service.
- Federal civilian employees, whether appropriated or nonappropriated. **EXCEPTION.** The injury arises in the performance of their duties.
- Subrogees (insurers) to the extent they have paid the claim.

5.14. Who Can't Claim:

- Agencies and NAFIs of the Federal Government.
- Governments of foreign nations, including their political subdivisions.

5.15. Liability Determination. The US. may be liable for claims arising out of the noncombat activities of ANG members while performing Title 32 duty, when acting within the scope of employment.

5.15.1. Settlement authorities don't need proof of negligence to pay a claim under the noncombat provisions of the NGCA; they only need a showing of causation and damages.

5.16. Claims Not Payable. Refer to paragraph 3.6 for claims not payable.

5.17. Measure of Damages. For incidents occurring in the US., the law of the place where the incident occurs determines the measure of damages. For incidents occurring in foreign countries, general principles of American tort law determine the measure of damages.

5.17.1. Settlement authorities:

- Use the pure comparative negligence rule when assessing damages.
- Don't pay punitive damages.

5.18. Paying Claims. Air Force claims funds pay the first \$100,000 of approved claims.

5.18.1. The GAO processes the remaining payment in accordance with 31 U.S.C. 1304.

Section D—Civil Air Patrol Claims

5.19. Type of Claims. CAP claims arising out of the activities of the CAP while performing Air Force-assigned missions in support of the Federal Government.

5.20. Instrumentality Status. The CAP is an instrumentality of the US. only when it is performing an Air Force-assigned mission listed in the Memorandum of Understanding Between the United States Air Force and the Civil Air Patrol, dated 25 January 1991. When the CAP engages in activities other than Air Force-assigned missions, it is acting as a private corporation.

★5.21. **Settling Claims.** Settlement authorities (SAF; TJAG; DTJAG; Director AFLSA/JAC; and the chief and branch chiefs, AFLSA/JACT) settle and pay CAP tort claims arising out of Air Force-assigned missions in accordance with the appropriate claims statute and chapter 2, 3, 4, and 5.

★5.22. **Notice of Claim.** Upon receiving a claim arising out of any CAP activity, the SJA contacts HQ CAPUSAF/JA, 105 South Hansell St, Maxwell AFB AL 361126332, for determination as to whether or not the activity in which the CAP was engaged was an Air Force assigned mission in support of the federal government.

5.23. **Proper Claims.** Proper claims include those in which the negligence of CAP members performing Air Force-assigned missions causes personal injury, death, or property damage.

5.24. Improper Claims:

- Claims arising out of CAP corporate activities.
- Claims of CAP members, 18 years of age or older, whose personal injury or death is covered under FECA.
- Claims for use of privately owned property that the CAP or its members utilize on Air Force-assigned missions.
- Claims for expenses that the CAP or its members incur while engaging in Air Force-assigned missions.

Section E—Admiralty and Maritime Claims

5.25. Type of Claims. Admiralty and maritime claims include:

- Claims for death, personal injury, or property damage arising out of the maritime activities of the Air Force.
- Claims that the US. makes when a vessel or floating object causes damage to Government property.
- Claims that the US. makes for salvage services that the Air Force performs.

5.26. Settlement Authority:

- 5.26.1. The SAF may:
- Deny claims in any amount.
 - Pay claims filed in any amount when payment is for \$500,000 or less.

- Certify to Congress the payment of any claim approved for more than \$500,000.

5.26.2. TJAG; the DJAG; the Director, AFLSA/JAC; and the Chief, AFLSA/JACT, may:

- Deny claims in any amount.
- Pay claims filed in any amount when payment is for \$100,000 or less.

5.26.3. The SAF may settle claims asserted for \$500,000 or less in favor of the US. for damage to property under the jurisdiction of the Air Force.

5.26.4. TJAG; the DJAG; the Director, AFLSA/JAC; and the Chief, General Claims Division (AFLSA/JACC), may settle claims asserted for \$100,000 or less in favor of the US.

5.26.5. The SAF settles claims in any amount in favor of the United States for salvage services that the Air Force performs.

5.27. Payable Claims:

- Property damage, personal injury, or death caused by a maritime tort, or by a vessel or other property under Air Force jurisdiction or control.
- Compensation for towage and salvage services that the claimant provides to disabled Air Force vessels or other property under Air Force jurisdiction or control.

5.28. Claims Not Payable:

- Claims resulting directly or indirectly from combat.
- Personal injury or death of US. Armed Forces members incident to their service.
- Personal injury or death of Federal civilian employees in the performance of their duties.
- Claims payable under the IACA.

5.29. Claims Assertable by the United States:

- Damage to property under Air Force jurisdiction caused by a vessel.
- Salvage services that the Air Force performs.

Section F—Miscellaneous Claims

★5.30. **Settlement Authority Under the Use of Government Property Claims Act.** The Chief and branch chiefs, AFLSA/JACT, the SJAs of 3AF, 5AF, and 9AF (for CENTCOM) and the SJAs of each Air Force base may:

- Deny claims in any amount.
- Settle claims filed in any amount when payment is for \$1,000 or less.

5.31 **Claims by Members For Certain Losses of Household Effects Caused by Hostile Act, 10 U.S.C. 2738.**

5.31.1. The SAF may:

- Deny claims in any amount.

- Pay claims filed in any amount when payment is for \$100,000 or less.
- Settle claims for payment exceeding \$100,000 by paying the first \$100,000 and reporting the excess to the GAO for payment.

5.31.2. TJAG; the DJAG; Director, AFLSA/JAC; Chief and branch chiefs, AFLSA/JACT may:

- Deny claims in any amount.
- Pay claims filed in any amount when payment is for \$25,000 or less.

5.31.3. Who Can Claim:

- Members of the Armed Forces of the United States.
- A member of the National Oceanic and Atmospheric Administrative or of the Public Health Service who is serving with the Navy or Marine Corps is treated as if he were a member of that Armed Forces.

5.31.4. Payable Claims. Losses of household effects sustained during a move made incident to a permanent change of station when, as determined by the SAF, the loss was caused by a hostile action incident to war or a warlike action by a military force.

5.31.5. Substantiation. Claimants substantiate their claims as required for MPCECA claims for transportation loss of personal property under AFI 51502.

5.31.6. Payment.

- Payment settlement of \$100,000 or less from Air Force claims monies.
- Pay settlements exceeding \$100,000 by paying the first \$100,000 with Air Force claims monies and sending the remainder to the GAO for payment under 31 U.S.C. 1304.

5.32. Claims Not Covered Under This Instruction. Air Force claims offices that receive torttype claims outside the coverage of this instruction coordinate with AFLSA/JACT to determine:

- Which Federal agency should process the claim.
- Under which statute the claim should be adjudicated.

BRYAN G. HAWLEY, Maj Gen, USAF
The Judge Advocate General

GLOSSARY OF REFERENCES, ABBREVIATIONS, ACRONYMS, AND TERMS**References**

5 U.S.C.8101, and following, *Federal Employees' Compensation Act*
 10 U.S.C. 2733, *Military Claims Act*
 10U.S.C.2734, *Foreign Claims Act*
 10U.S.C.2734a, 2734b, *International Agreement Claims Act*
 10U.S.C.2736, *Advance Payments Act*
 10U.S.C.2737, *Use of Government Property Claims Act*
 10U.S.C.2738, *Property Loss: Reimbursement for certain losses of household effects caused by hostile action.*
 10U.S.C.9801-9804,9806, *Air Force Admiralty Claims Act*
 28 U.S.C. 1346(b), 2671-2680, *Federal Tort Claims Act*
 31 U.S.C. 1304, *Judgments, Awards, and Compromise Settlements*
 31 U.S.C. 3701, 3721, *Military Personnel and Civilian Employees' Claims Act*
 32U.S.C.316,502,503, 504, 505, *National Guard Training*
 32 U.S.C. 709, *Technicians: Employment, Use, Status*
 32 U.S.C. 715, *National Guard Claims Act*
 33 U.S.C.901 , and following *Longshore and Harbor Workers' Compensation Act*
 46 U.S.C. Appendix 740, *Extension of Admiralty and Maritime Jurisdiction*
 46U.S.C.Appendix741, and following, *The Suits in Admiralty Act*
 46 U.S.C. Appendix 761, and following, *The Death on the High Seas Act*
 46 U.S.C. Appendix 781, and following, *The Public Vessels Act*
 28C.F.R.14.1-14.11, *Administrative Claims Under Federal Tort Claims Act*
 DoD Directive 5515.6, *Processing Tort Contract and Compensation Claims Arising Out of Operations of Nonappropriated Fund Activities*
 DoD Directive 5515.8, *SingleService Assignment of Responsibility for Processing of Claims*
 AFI 32-8006, *Acquisition of Real Property (formerly AFR 87-1)*
 AFI 32-9003, *Disposal of Real Property (formerly AFR 87-4)*
 AFI 37131, *Air Force Freedom of Information Act Program (formerly AFR 4-33)*
 AFI 37132, *Privacy Act Program (formerly AFR 12-35)*
 AFI 51502, *Personnel Claims (formerly AFR 112-1)*
 AFI 51503, *Aircraft, Missile, Nuclear, and Space*
 Accident Investigations (formerly AFR 110-14)
 AFM 171-575, *Armed Forces Claims Information Management*
 System (AFCIMS) User Manual

Abbreviations and Acronyms

AAFES—Army and Air Force Exchange Service
AAFESIOSCAC—Army and Air Force Exchange Service/Operations Center
AB—Air base
AFACA—Air Force Admiralty Claims Act
AFB—Air Force base
AFCIMS—Armed Forces Claims Information Management System
AFI—Air Force instruction
AFLSA/JAC—Air Force Legal Services Agency/Civil Law and Litigation Directorate
AFLSA/JACC—Air Force Legal Services Agency/General Claims Division
AFLSA/JACE—Air Force Legal Services Agency/Environmental Law and Litigation Division
AFLSA/JACT —Air Force Legal Services Agency/Tort Claims and Litigation Division
AFMWRS/LAW —Air Force Morale, Welfare, Recreation And Services Agency/Legal Advisor
AFSPACECOM —Air Force Space Command
ANG —Air National Guard
APA —Advance Payment Act
CAP —Civil Air Patrol
CAPUSAF —Civil Air Patrol United States Air Force
CENTCOM—Central Command

CFR –Code of Federal Regulations
CONUS –Continental United States
DJAG –Deputy Judge Advocate General
DoD –Department of Defense
DoJ –Department of Justice
FCA –Foreign Claims Act
FCC –Foreign Claims Commission
FECA –Federal Employees Compensation Act
FTCA –Federal Tort Claims Act
GAO –General Accounting Office
IACA –International Agreement Claims Act
LHWCA –Longshore and Harbor Workers’ Compensation Act
MAJCOM –Major command
MCA –Military Claims Act
MLC –Medical law consultant
MPCECA –Military Personnel and Civilian Employees’ Claims Act
MWRSA –Morale, Welfare, Recreation and Services Agency
NAFI –Nonappropriated funds instrumentality
NATO –North Atlantic Treaty Organization
NGCA –National Guard Claims Act
PVA –Public Vessels Act
SAA –Suits in Admiralty Act
SAF –Secretary of the Air Force
SF 95 –Standard Form 95
SF 1145 –Standard Form 1145
SJA –Staff Judge Advocate
SOFA –Status of forces agreement
TJAG –The Judge Advocate General
UGPCA –Use of Government Property Claims Act
US –United States
USC –United States Code

Terms

Air Force Noncombat Mission for Civil Air Patrol.— Any mission for which the Air Force is tasked by statute, instruction, or higher authority which does not involve actual combat, combat operations, or combat training.

Air National Guard (ANG).— The federally recognized Air National Guard of each state, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and Guam. ANG Duty Status:

Active Federal Service.— ANG members may serve on active federal duty under-Title 1 0 to augment the active Air Force under certain circumstances or for certain types of duty or training.

Federally Funded Duty.— ANG members perform specified federally funded duty or training under Title 32 such as:

- Weekend drills.
- Annual training.
- Field exercises.
- Range firing.
- Military schooling.
- Fulltime unit support.
- Recruiting duties.

State Duty.— State duty is duty not authorized by Federal law, but that the governor of the state requires and pays for with state funds.

ANG Member.— One who performs duty under 32 U.S.C. 316, 502, 503, 504, or 505, for which the member receives pay from the United States or waives pay from the US.

ANG Technician.— A Federal employee employed in accordance with 32 U.S.C. 709.

Appeal.— Under the MCA and NGCA, a request by the claimant to reevaluate the final agency action on the claim.

Army and Air Force Exchange Service (AAFES).— A joint command of the Army and Air Force that provides exchange and motion picture services to authorized patrons.

Authorized Agent.— Any person or corporation, including a legal representative, with the authority to act on a claimant's behalf.

CAP Members.— Private citizens who volunteer their time, services, and resource,; to meet CAP objectives and purposes. The two primary categories of members are cadets and seniors.

Civil Air Patrol (CAP).— A federally chartered, nonprofit corporation that Congress designated in 1948 as a volunteer civilian auxiliary of the Air Force.

Cadets.— Youths, 13 years (or having satisfactorily completed the sixth grade) through 17 years of age, who meet the requirements set by CAP corporation. Cadets may keep their status until age 21.

Seniors.— Adults, 18 years of age or older (there is no maximum age), who:

- Meet the requirements set by the CAP corporation.
- Have not kept their cadet status.

Civilian Component.— Civilian personnel accompanying and employed by an international agreement contracting force. Local employees, contractor employees, or members of the American Red Cross are not a part of the civilian component.

EXCEPTION. When the international agreement specifically includes them.

Civilian Personnel.— Civilian employees of the US. Government who are paid from appropriated or nonappropriated funds. Civilian employees include volunteer workers.

Claim.— Any signed, written demand made upon or by the Air Force for the payment of a specific sum. It does not include any obligations that the Air Force acquires in the regular procurement of services, supplies, equipment, or real estate. Under the FCA, a claim need not be in writing if local custom dictates otherwise.

Claimant.— An individual, partnership association, corporation, country, state, territory, or its political subdivisions.

Compromise.— An agreed settlement based upon the facts, the law, and the application of the law to the facts.

Contracting Party.— A nation signing the governing international agreement

Final Denial.— A letter from a settlement authority to the claimant or authorized agent advising of the decision to deny the claim.

Force.— Personnel belonging to the land, sea, or air armed services of one contracting party when in the territory of another contracting party in connection with their official duties.

Foreign Country.— A nationstate, other than the US. and its territories, including any place under the jurisdiction of the US. in a foreign country.

Geographic Area of Claims Responsibility.— The SJA's jurisdiction for claims. AFLSA/JACC, as TJAG authorizes, assigns CONUS claims areas. The SJAs of HQ PACAF, HQ USAFE, and HQ 9AF' (for CENTCOM) designate the areas within their jurisdictions. The DoD assigns areas of singleservice responsibility to each military department.

Inhabitant of a Foreign Country.— A person, corporation, or other business association whose usual place of abode is in a foreign country. The term "inhabitant" has a broader meaning than such terms as "citizen" or "national," but does not include persons who are merely temporarily present in a foreign country. The term does not require foreign citizenship or permanent, legal residence.

Legally Responsible.— A term of art providing for settlement of claims under costsharing international agreements in accordance with the law of the receiving state. Often employees who are local inhabitants, not part of the civilian component, cause these claims under a respondent superior theory.

Maritime Tort.— A tort committed in navigable waters, or on land or in the air where a substantial element of the damage, personal injury, or death occurred in navigable waters. The activity causing the tortious act must bear some significant relationship to traditional maritime activity.

Morale, Welfare, Recreation, and Services (MWRS) Activities.— Activities operated directly or by contract, which provide programs to promote morale and wellbeing of the Air Force's military and civilian personnel and their dependents.

- Wholly with appropriated funds.
- Primarily with nonappropriated funds.
- With a combination of appropriated and nonappropriated funds.

Negligence.— A failure to act as a reasonably prudent person would under the same or similar circumstances.

Nonappropriated Funds.— Funds that DoD military and civilian personnel and their dependents generate and that the DoD adds to Congressionally appropriated funds to provide a comprehensive moralebuilding, welfare, religious, educational, and recreational program, designed to improve the wellbeing of military and civilian personnel and their dependents.

Nonappropriated Fund Instrumentality.— A Federal Government instrumentality established to generate and administer nonappropriated funds for programs and services for the mental and physical wellbeing of personnel.

Noncombat Activity.— Activity, other than combat, war, or armed conflict, that:

- Is particularly military in nature.
- Has little parallel in civilian pursuits.
- Has been historically considered as furnishing the proper basis for claims.

Owner.— A holder of a legal title or an equitable interest in certain property.

Personal Injury.— Includes both bodily injury and death.

Property Damage.— Damage to, loss of, or destruction of real or personal property.

Proximate Cause.— The dominant or primary cause of an injury or loss.

Pure Comparative Negligence Rule.—A reduction in liability in proportion to the amount of negligence attributable to parties other than the US. Parties may recover based upon the proportion (percentage) of negligence not attributable to them, regardless of whether or not they were more negligent than another party.

Receiving State.— The country where the force or civilian component of another party is temporarily located.

Sending State.— The country sending the force or civilian component to the receiving state.

Settle.— To consider and pay or deny a claim, in full or in part.

Subrogation.— The act of assuming the legal rights of another after paying a claim or debt (for example, an insurance company [subrogee] paying its [subrogor's] claim, thereby assuming the insured's right of recovery.)

Third Parties.— Those other than members of the force and civilian component of the sending or receiving states. Dependents, tourists, and other noninhabitants of a foreign country are third parties. **EXCEPTION.** The agreement specifically excludes them.

Tort.— A civil wrong in which one party causes personal injury or property damage to another and may be liable in damages.

Vessel.— Every description of watercraft used or usable as a means of transportation on water.

★PREPARING, ARRANGING, AND ASSEMBLING TORT CLAIM FILES

A2.1. Claims personnel arrange all tort claim files under these tabs, from top to bottom: **Exception:** *Claims involving property damage only which are settled locally and never forwarded to JACT do not have to be tabbed.*

- TAB A Sevenpoint memorandum.
- TAB B Claim (SF 95 or other notice of claim) and any supporting documents presented with it.
- TAB C Expert or consultant opinions.
- TAB D Witness locator information.
- TAB E Memoranda of witness interviews.
- TAB F Photographs.
- TAB G Technical information on devices and equipment.
- TAB H Regulations, directives.
- TAB I Extracts from books or journals.
- TAB J Applicable local statutes and state court decisions.
- TAB K Correspondence with claimant or claimant's attorney.
- TAB L Miscellaneous correspondence (latest on top).
- TAB M Miscellaneous records (training, repair, maintenance).
- TAB N Applicable medical records.
- TAB O Investigations by others (accident, police, AFI 51-503 accident reports, and so on).
- TAB P Applicable contractual provisions.

A2.2. If you don't use a particular tab, place a sheet of paper behind it stating, "This tab not used."

A2.3. Provide a separate index listing the documents at each of Tabs M, N, O, and P, including the name, address, and telephone number of the custodian for each document.